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CHILD SUPPORT

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REPORT TO THE 1985 GENERAL ASSEMBLY OF NORTH CAROLINA 1986 SESSION

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STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

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May 28, 1986

TO THE MEMBERS OF THE 1985 GENERAL ASSEMBLY (1986 Session):

The Legislative Research Commission herewith reports to the 1985 General Assembly (1986 Session) on the matter of Child Support. The report is made pursuant to Chapter 790 of the 1985 General Assembly (1985 Session).

This report was prepared by the Legislative Research Commission's Committee on Child Support and is transmitted by the Legislative Research Commission for your consideration.

Respectfully submitted,

Liston B. Ramsey

J. J. (Monk) Harrington

Cochairmen
Legislative Research Commission

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TABLE OF CONTENTS

		Page
I.	PREFACE	1
II.	INTRODUCTION	2
III.	COMMITTEE PROCEEDINGS	3
IV.	ADMINISTRATION OF THE IV-D PROGRAM	4
V.	APPENDICES:	

A. Authorizing Legislation: Subdivision (35) of Chapter 790 (S.B. 636) of the 1985 Session; Senate Bill 638 of the 1985 Session

B. Legislative Research Commission Membership

C. Child Support Study Committee Membership

D. Summary, Child Support Enforcement Amendments of 1984

E. Status of North Carolina on Federal Child Support Enforcement Amendments of 1984

F. Letter from Speaker Liston B. Ramsey

G. Letter from Lieutenant Governor Robert B. Jordan, III

H. Proposed Legislation, A BILL TO BE ENTITLED AN ACT TO AMEND THE GENERAL STATUTES TO ESTABLISH PROCEDURES FOR WITHHOLDING FROM WAGES AND OTHER INCOME IN CHILD SUPPORT CASES AS REQUIRED BY FEDERAL INCOME

I. Proposed Legislation, A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR EXPEDITING CHILD SUPPORT CASES AS REQUIRED BY FEDERAL LAW

J. Proposed Legislation, A BILL TO BE ENTITLED AN ACT TO ACHIEVE GREATER CONSISTENCY AND EQUITY IN THE SETTING OF CHILD SUPPORT OBLIGATION AMOUNTS THROUGH THE USE OF ADVISORY GUIDELINES

K. Proposed Legislation, A BILL TO BE ENTITLED AN ACT TO AMEND THE APPLICATION FEE AND COST RECOVERY PROVISIONS RELATED TO THE IV-D CHILD SUPPORT PROGRAM

PREFACE

PREFACE

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1985 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The cochairmen of the Legislative Research Commission, under the authority of General Statute 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairmen, one from each house of the General Assembly, were designated for each committee.

INTRODUCTION

INTRODUCTION

The handling of child support from establishment through enforcement is quite an economic phenomenom in North Carolina. At present there are over 128,000 child support accounts under the management of the clerks of superior court. At any one time over fifty percent of those accounts are in default. Total collections for last year were over $130 million.

In 1984 Congress unanimously enacted the Child Support Amendments of 1984. These amendments were in response to census data which showed the alarming number of absent parents who fail to pay child support, which backers of the legislation called a "national scandal." The amendments make major reform in child support law and require certain state laws and procedures.

The study of child support was authorized by Subdivision (35) of Chapter 790 of the 1985 Session Laws. That act states that the Commission may consider Senate Bill 638 in determining the nature, scope and aspects of the study. Section 1 of Senate Bill 638 reads:

> "The Legislative Research Commission may study the issue of child support and related matters including consideration of the need to establish a Commission to examine all issues related to child support that were set forth in the federal Child Support Amendments of 1984 (P.L. 98-378)."

Relevant portions of Chapter 790 and Senate Bill 638 are included in Appendix A of this report.

The Legislative Research Commission grouped this study in its children area under the direction of Senator Lura Tally. The Committee was chaired by Senator Helen Rhyne Marvin and Representative Ruth Easterling. The full membership of the Committee is listed in Appendix C of this report.

COMMITTEE PROCEEDINGS

COMMITTEE PROCEEDINGS

The Child Support Study Committee met four times. Below is a short synopsis of each meeting. The more detailed minutes of each meeting are available in the Legislative Library of the Legislative Building.

Meeting on December 13, 1985

The first meeting of the Child Support Study Committee was held December 13, 1985. The meeting was organizational in nature, and the Committee was given an overview of the present legal and administrative structure of child support in North Carolina.

Speakers were present from various governmental agencies, and public and private groups, including the Administrative Office of the Courts, Department of Human Resources, Clerks of Court, private attorneys, Legal Services and the District Court System. Each speaker reviewed his role in child support delivery and commented on problems and suggestions for the work of the Study Committee. The Committee also heard from the speakers as to what the obligations of North Carolina were under the federal Child Support Amendments of 1985 (See Appendix D).

The problems listed by the various speakers are as follows:

1) Increasing caseload in the judicial system and offices of the clerks of superior court;
2) Large number of statutes on child support scattered

throughout many chapters;

3) Multiple tracks with varying remedies;

4) Differing services between judicial districts;

5) Timeliness of collections;

6) Cost recovery and cost effectiveness;

7) Maximization of federal funding;

8) Computerization and distribution of the money;

9) Single portal of entry;

10) Interstate handling of cases;

11) Duplication and barriers to services;

12) Fathers' rights.

Meeting on February 6 and 7, 1986

The second meeting of the Child Support Study Committee was a two-day meeting on February 6 and 7, 1986. The February 6 meeting was designed for a full day on "single portal of entry," and the February 7 meeting was devoted to consideration of bills to recommend to the 1986 Session of the General Assembly.

On the topic of single portal of entry, many different opinions were expressed by the various representatives of interested groups. Options presented to the Study Committee included: 1) single track but not a single agency, 2) single designated state agency, 3) establishment of a "family law magistrate" to hear child support matters, or 4) no single portal of entry. Private attorneys expressed concern over the limitless range of situations which require different recourses and that child support should not be placed in one "administrative box."

Most speakers reiterated that the remedies available in criminal court should remain, since they are the most effective. The Committee heard that single portal of entry is most effective in enforcement, not establishment, of child support.

The Committee next reviewed the Expedited Process Bill proposed by an Advisory Committee working under the Administrative Office of the Courts. Much discussion centered around the qualifications of the hearing officer - specifically, what the education and experience of that individual should be. The Committee made some minor changes to the bill and directed that some language be included to provide a procedure upon a deadlock in counties that would be required to establish a child support hearing officer.

In considering S.B. 303 on Income Withholding, the Committee took no final action but spent considerable time in discussing a proposed substitute. Questions arose as to what income should be covered by the committee substitute. Attorneys fees and court costs were added to the provisions regarding non-IV-D cases. Certain procedural details were changed and some minor language was rewritten. The Committee heard comment from the business community who had many concerns regarding income withholding, including employers' obligations, how the civil penalty would apply, and how an employer could seek to terminate withholding.

Meeting on March 21, 1986

The third meeting of the Child Support Study Committee was

March 21, 1986. The Committee took action on the Expedited Process Bill and the Committee Substitute for Senate Bill 303.

The Expedited Process Bill was approved after the changes from the last meeting were reviewed and discussed.

The Committee Substitute for S.B. 303 was again considered by the Study Committee. Two further changes were approved by the Committee: 1) to require the employer to compute the appropriate percentage when the set amount of money to be withheld is not available in the employee's salary for that pay period, and 2) to allow an action for damages or reinstatement by an employee when penalizing action is taken by the employer against the employee solely because of withholding. The Committee then approved the Committee Substitute for S.B. 303 with those changes for recommendation to the 1986 Session of the General Assembly.

The next topic considered by the Committee was Child Support Guidelines. By October, 1987, federal law requires that all States have uniform, statewide guidelines that are numerical and narrative. Janet Mason of the Institute of Government reported on the DHR Task Force Report to the Secretary of DHR. Ms. Mason also reviewed the report of the Conference of Chief District Court Judges to the Chief Justice of the Supreme Court. The Committee then instructed Staff to draft a bill to incorporate language that the Conference of Chief District Court Judges shall draw the guidelines, which shall be advisory. After two years the Administrative Office of the Courts shall survey the judicial districts on the effectiveness of the guidelines and report to the General Assembly.

The issue of administration of the IV-D Program was next

considered by the Committee. Christine Sutton, Section Chief of the Wake County IV-D Program cited both the advantages and disadvantages of conversion to a completely state-operated system. Disadvantages include: 1) start-up costs, 2) loss of county or courthouse space, 3) loss of county computerization, 4) changeover and disruption, 5) loss of local support, and 6) collections might decrease for a period of time. Advantages include: 1) salaries would be higher, 2) more staff, and 3) several counties could be combined into one system. Ms. Sutton recommended that the system be kept as it is now.

Patrice Roesler, speaking for the County Commissioners Association, recommended maximum county flexibility and for the State to pay fifty percent of the nonfederal share of the program expenses.

J. E. Neves, Director of the Western Regional DSS Office, reported on the recommendations of the DHR Task Force to the Secretary of DHR. The Task Force recommended that the General Assembly enact legislation to delete the county option and "freeze" the system. Counties would be allowed to take the program back from the State. If counties operate the program, the State should share 50/50 of the nonfederal costs. The General Assembly should require DHR to establish program standards, and funding should be sufficient to implement the standards.

It was noted by Nina Yeager of Fiscal Research that if the State took over fifty percent of the nonfederal share, the cost to the State would be $1.5-$1.6 million. It would also be new policy for the State to cover the nonfederal share of administrative costs.

Meeting on April 11, 1986

The final meeting of the Child Support Study Committee was held April 11, 1986. The Committee approved the report and the proposed legislation for recommendation to the Legislative Research Commission and the 1986 Session of the General Assembly.

ADMINISTRATION OF THE

IV-D PROGRAM

ADMINISTRATION OF THE IV-D PROGRAM

The Committee heard evidence that there are excellent state-operated programs and excellent county-operated programs, and the Committee thinks it would not be cost-effective nor prudent to require either program to switch over to the other administration. Accordingly, the Committee recommends that no more counties be allowed to return the administration of the IV-D Program to the State, but that any county, upon a year's notice to the State, may be granted permission to establish a county-administered program.

The Committee recognizes the need for some state subsidy of the nonfederally-funded administrative costs of the IV-D Program borne by counties. The Committee recommends that Fiscal Research and the Department of Human Resources develop a formula or incentive program or some other option by which to provide this subsidy. A possible option could be for the State to absorb at least fifty percent (50%) of the nonfederally-funded administrative costs. The Committee recommends that Fiscal Research and the Department of Human Resources develop the proposals and report on or before the convening of the 1987 Legislative Session.

APPENDICES

"(d) It shall be unlawful to operate a noncommercial passenger vehicle registered or which is required to be registered in this State, including passenger cars, pickup trucks and passenger vans, upon any highway or public vehicular area with a windshield or any other window which does not meet the light transmittance requirements of federal motor vehicle safety standard No. 205. Provided, vehicles with a windshield or any other window installed prior to August 1, 1985 which does not meet the light transmittance requirements of federal motor vehicle standard No. 205 or vehicles transporting deceased human remains will be exempt from the provisions of this subsection.

(e) No motor vehicle inspection certificate shall be issued on or after January 1, 1987 for a motor vehicle subject to subsection (d) with a windshield or any other window which does not meet the light transmittance requirements of federal motor vehicle safety standard No. 205. Any motor vehicle otherwise subject to subsection (d) will be exempt from the provisions of this subsection provided the vehicle owner provides the motor vehicle inspector a document, attesting that any windshield or any other window not in compliance with subsection (d) was installed prior to August 1, 1985."

Sec. 2. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 18th day of July, 1985.

S.B. 636 **CHAPTER 790**

AN ACT AUTHORIZING STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, MAKING TECHNICAL AMENDMENTS THERETO, AND TO MAKE OTHER AMENDMENTS.

The General Assembly of North Carolina enacts:

Section 1. Studies Authorized. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1985 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

(1) Continuation of the Study of Revenue Laws (H.J.R. 17-Lilley),

(2) Continuation of the Study of Water Pollution Control (H.J.R. 141-Evans),

(3) Adolescent Sexuality Teaching (H.J.R. 275-Jeralds),

(4) Continuation of the Study on the Problems of the Aging (H.J.R. 322-Greenwood),

(5) Continuation of the Study of Municipal Incorporations (H.J.R. 389-Greenwood),

(6) School Discipline (H.J.R. 861-Colton),

(7) Bail Bondsmen and Bail Bond Forfeiture (H.B. 967-Watkins),

(8) Preventative Medicine (H.B. 1052-Locks),

(9) Life Care Arrangements (H.B. 1053-Locks),

(10) State Personnel System (H.B. 1064-Wiser),

(11) Long-Term Health Care Insurance (H.B. 1103-Locks),

(12) Itinerant Merchants (H.B. 1170-Lancaster),

(13) Manufactured Housing Zoning (H.B. 1178-Ballance; S.B. 636-Plyler),

(14) Interest Rate Regulation (H.J.R. 1227-Evans),

(15) Underground Storage Tank Leakage Hazards and other ground water hazards (H.B. 1281-Locks),

(16) Mental Patient Commitments (H.J.R. 1313-Miller),

(17) High-Level Radioactive Waste Disposal (H.B. 1373-Diamont; S.B. 655-Hipps),

(18) Stun Guns (H.J.R. 1390-McDowell),

(19) Continuation of the Study of Water Quality in Haw River and B. Everett Jordan Reservoir (H.J.R. 1393-Hackney),

(20) Authority of Boards of County Commissioners in Certain Counties over Commissions, Boards and Agencies (H.J.R. 1405-Holroyd),

(21) Superintendent of Public Instruction and State Board of Education (H.J.R. 1412-Nye),

(22) Rental Referral Agencies (H.B. 1421-Stamey),

(23) Child Abuse Testimony Study (S.B. 165-Hipps),

(24) Home Schooling Programs (S.J.R. 224-Winner),

(25) Pretrial Release (S.J.R. 297-Winner),

(26) Inmate Substance Abuse Therapy Program (S.J.R. 317-Plyler),

(27) Inmate Work-Release Centers (S.B. 406-Swain),

(28) Community College System (S.B. 425-Martin),

(29) Community Service Alternative Punishment and Restitution (S.B. 495-Swain),

(30) State Employee Salaries and Benefits (S.B. 514-Jordan),

(31) State Infrastructure Needs (S.B. 541-Royall),

(32) Commercial Laboratory Water Testing (S.B. 573-Taft),

(33) Outdoor Advertising (S.B. 611-Thomas, R.P.),

(34) Premium Tax Rate on Insurance Companies (S.B. 633-Hardison)

(35) Continuation of the Study of Child Support (S.B. 638-Marvin),

(36) Local Government Financing (S.B. 670-Rauch),

(37) Medical Malpractice and Liability (S.B. 703-Taft),

(38) Marketing of Perishable Food (S.B. 718-Basnight),

(39) Child Protection (S.B. 802-Hipps),

(40) Legislative Ethics and Lobbying (S.B. 829-Rauch),

(41) Satellite Courts (S.B. 850-Barnes),

(42) Substantive Legislation in Appropriations Bills (S.B. 851-Rand),

(43) School Finance Act (S.B. 848-Taft).

Sec. 2. Transportation Problems at Public Facilities. The Legislative Research Commission may identify and study transportation problems at public transportation facilities in North Carolina.

Sec. 2.1. The Legislative Research Commission may study the feasibility of the prohibition of investment by the State Treasurer of stocks of the retirement systems listed in G.S. 147-69.2(b)(6), or of the assets of the trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1 and G.S. 147-69.2(19) in a financial institution that has outstanding loans to the Republic of South Africa or in stocks, securities, or other obligations of a company doing business in or with the Republic of South Africa.

Sec. 3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1987 General Assembly, or the Commission may make an interim report to the 1986 Session and a final report to the 1987 General Assembly.

Sec. 4. Bills and Resolution References. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 5. The last sentence of G.S. 120-19.4(b) is amended by deleting the citation "G.S. 5-4" and inserting in lieu thereof the following: "G.S. 5A-12 or G.S. 5A-21, whichever is applicable".

Sec. 6. G.S. 120-99 is amended by adding a new paragraph to read:

"The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that the chairman shall sign all subpoenas on behalf of the Committee."

Sec. 7. G.S. 120-30.17 is amended by adding a new subsection to read:

"(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 18th day of July, 1985.

S.B. 489 **CHAPTER 791**

AN ACT TO MAKE ADDITIONAL APPROPRIATIONS FOR VARIOUS STATEWIDE PROJECTS AND FOR OTHER PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. The outline that follows shows the heading "——CONTENTS/INDEX——" and it lists by general category the descriptive captions for the various sections and groups of sections that make up the act. This outline is for reference only, and the outline and the corresponding entries throughtout the act in no way limit, define, or prescribe the scope or application of the text of the act.

——CONTENTS/INDEX——

——SCHOOL QUALITY ASSURANCE FUNDS
Sec. 2.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1985

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SENATE BILL 638
Second Edition Engrossed 6/7/85

Short Title: LRC Child Support Study. (Public)

Sponsors: Senator Marvin.

Referred to: Rules and Operations of the Senate.

May 15, 1985

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY CHILD SUPPORT ISSUES.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission may study the issue of child support and related matters[S-/][S-, including consideration of the need to establish a Commission to examine all issues related to child support that were set forth in the federal Child Support Amendments of 1984 (P.L. 98-925).] The Legislative Research Commission may make an interim report, including recommendations, to the 1985 General Assembly, Regular Session 1986, and may make a final report to the 1987 General Assembly.

Sec. 2. This act is effective upon ratification.

LEGISLATIVE RESEARCH COMMISSION

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Subject: Child support
Auth: Chapter 790 § 1 (35) (SB 636-Sen. Plyler, et al), SB 638 (Sen. Marvin)

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SUMMARY
CHILD SUPPORT ENFORCEMENT
AMENDMENTS OF 1984

PROVISION	REQUIREMENT	STATUS	REMARKS
Income Withholding	State agencies must provide for wage withholding in IV-D cases when arrearages accrue equal to one month's support. All new or modified orders issued in the State must include a provision for wage withholding when arrearage occurs.	State legislation is required to implement this provision. It is anticipated that action will be taken during the 1986 legislative session.	This provision was provided for in the Department's 1985 legislative package but was not adopted.
Expedited Processes	States must use expedited judicial or administrative processes for obtaining and enforcing court orders.	An implementation delay has been requested. We are in the process of developing statistics necessary to request an eventual waiver.	
State Income Tax Refund Offset	States are required to off-set State income tax refunds to collect overdue support in all appropriate IV-D cases without regard to intrastate or interstate status.	Senate Bill 300 amended G.S.105A-2(1)d which authorizes the use of offset procedures for non-AFDC and interstate cases. Notices regarding the availability of tax intercept has been mailed to all non-AFDC clients.	Preliminary instructions have been issued to local IV-D. Additional policy instructions are to be issued.
Federal Tax Refund Offset	States must collect overdue support from Federal income tax refunds for all IV-D cases-AFDC, Non-AFDC and foster care cases.	Program manual material has been expanded to include non-AFDC cases. Notices regarding the availability of tax intercept has been mailed to all clients.	Local training accomplished August 15-22, 1985. Policy material to be issued September 1, 1985.

SUMMARY
CHILD SUPPORT ENFORCEMENT
AMENDMENTS OF 1984

PROVISION	REQUIREMENT	STATUS	REMARKS
Imposition of Liens	State law must provide for imposing liens against real and personal property to satisfy overdue support.	No change was required in State statutes. Program manual section was developed to provide guidelines and policy to local agencies.	Training accomplished at local level August 15-22. Policy to be issued September 1, 1985.
Posting Security or Bonds	State law must provide for posting of security bond or other guarantee by an absent parent with a pattern of overdue support.	No change in Statutes required. Policy and procedures have been developed and provided to local IV-D agencies.	Policy to be issued September 1, 1985.
Reports to Credit Bureaus	When requested, State agencies must report overdue support amounts over $1000.00 to Credit Bureaus.	Policy with procedures for sharing information with Credit Bureaus and providing notice to absent parents has been developed.	Policy to be issued September 1, 1985.
Public Awareness	States must regularly publicize the availability of Child Support Enforcement Services.	Initial action to provide for 10 Billboards publicizing the program statewide has occurred.	Further plans to satisfy this provision will be initiated by October 1, 1985 with DHR Public Information Office.

SUMMARY
CHILD SUPPORT ENFORCEMENT
AMENDMENTS OF 1984

PROVISION	REQUIREMENT	STATUS	REMARKS
Equal Services	Wage withholding and other required techniques are mandated for non-welfare as well as welfare cases.	Amendments were made to North Carolina General Statutes to allow the use of Tax Intercept for non-AFDC cases.	Wage withholding legislation is pending - all other enforcement remedies are provided to all clients on an equal basis.
Fees for Services	States must charge an application fee up to $25 for non-AFDC cases - to be charged to applicants, absorbed from State funds or charged to the absent parent.	No action was required to implement this requirement.	We have charged an application fee since the beginning of services to non-AFDC clients.(1983) However,G.S.110-130.1 was amended by Senate Bill 337 which reduced the application fee from $20 to $10.
Support Guidelines	States must develop suggested guidelines, administratively, judicially or legislatively for establishing support amounts.	The DHR Task Force recommended that guidelines be legislated by the General Assembly.However,the Dept. maintains that such guidelines should be developed administratively.	A Committee of State and local IV-D employees are working to develop guidelines administratively.
State Commissions	Governors are to appoint commissions to oversee child support enforcement systems, with broad representation of groups most affected.	A waiver was granted by OCSE.	The DHR Task Force has been revived to study the issues assigned to the Commission.

SUMMARY
CHILD SUPPORT ENFORCEMENT
AMENDMENTS OF 1984

PROVISION	REQUIREMENT	STATUS	REMARKS
Continued IV-D Services After Termination of AFDC	States must continue providing service to clients for five months upon termination of AFDC benefits.	Manual material has been issued to local IV-D agencies to address the mandatory provision of services for five months after AFDC terminates.	
Mandatory Collection of Spousal Support	States must collect spousal support when an order establishes this obligation and a IV-D agency is enforcing a child support order.	Senate Bill 206 Amended G.S. 110 by adding a new section which authorizes the collection of spousal support established by a court order when the IV-D agency is enforcing a child support order.	Manual material has been prepared for review by IV-D and Policy and Liaison Committees in September.
Medical Support	Medical support must be included in child support orders when health coverage is available to an absent parent at a reasonable cost.	Manual material has been developed to provide guidance to local agencies to ensure the exchange of medical support coverage information between IV-D and local AFDC/MA units, including procedures for establishing medical support.	Policy material was issued August 1, 1985.
Notice of Collections of Assigned Support	At least annually States must provide notice of the amount of assigned support collected to current or former AFDC recipients.	Automated system changes are being made to allow for system generated notice to clients.	

SUMMARY
CHILD SUPPORT ENFORCEMENT
AMENDMENTS OF 1984

PROVISION	REQUIREMENT	STATUS	REMARKS
Accessing Federal Parent Locator Service	States are permitted to access the Federal Parent Locator Service without exhausting State Parent Locator Resources.	The absent parent location section of the program manual has been revised to meet Federal requirements.	Policy material issued August 1, 1985.
Late Payment Fees	States may provide for the imposition of a fee of 3-6 percent of overdue support on absent parents who owe overdue support in cases in which the agency is attempting to collect support.	This provision is optional - no action has been taken to implement this provision.	
Incentive Payments	Federal incentive payments which formerly applied to AFDC cases will now be based on collections for both AFDC and non-AFDC cases.	Information regarding the change in incentive payments and Federal matching funding for Administration has been shared with agencies via local and State training conferences.	A manual section is being prepared to provide this information to local agencies.
Federal Matching for Administration	Matching funds for administrative costs, now 70%, will be reduced to 68% in 1988 and 1989, and to 66% in 1990 and thereafter	A manual section is being prepared to provide this information to local agencies.	

SUMMARY
CHILD SUPPORT ENFORCEMENT
AMENDMENTS OF 1984

PROVISION	REQUIREMENT	STATUS	REMARKS
Audits and Penalties	Performance based audits of State Programs are now required. The current 5 percent penalty for States with non-complying programs is replaced with graduated penalties of from 1 to 5 percent.	Local program review requirements and procedures are being revised to be consistent with Federal regulations.	

SESSION 19 85 J-074

INTRODUCED BY:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE APPLICATION FEE AND COST RECOVERY PROVISIONS RELATED TO THE IV-D CHILD SUPPORT PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-130.1(a) is amended by deleting the language "a ten dollar ($10.00) application fee" and substituting "an appropriate nonrefundable application fee. For applicants whose gross household income is equal to or less than one hundred seventy-five percent (175%) of the then currently-established poverty level applicable to the applicant's household size, the application fee shall be five dollars ($5.00). For applicants whose gross household income exceeds such poverty level, the application fee shall be twenty-five dollars ($25.00).

For purposes of this section, 'household income' means the sum of the gross amount of periodically recurring income which accrues to the members of a collective group of individuals living in one residence consisting of a natural or adoptive parent who has custody of a dependent child or children whose other natural or adoptive parent is absent from the residence, the custodial parent's current spouse, and all other dependent children. 'Household size' means the sum of the persons specified as living in the residence as described above."

Sec. 2. G.S. 110-130.1 is amended by rewriting subsection (b) and adding a new subsection (b1) to read:

"(b) Except for the application fee, the State shall not recover the costs or fees of providing services to a non-AFDC client whose household income is equal to or less than one hundred seventy-five percent (175%) of the federal poverty guidelines.

(b1) The State shall recover the actual costs of providing services to a non-AFDC client whose gross household income exceeds one hundred seventy-five percent (175%) of the then currently-established federal poverty level applicable to the client's household size until all costs incurred on the client's behalf have been recovered. The rate of accrual of such costs shall be computed annually by the Department of Human Resources and disclosed at the time of application to the client as an hourly dollar amount for administrative services and an hourly dollar amount for attorney's services. Incurred costs may be recovered by any or all of the following means:

(1) a ten percent (10%) deduction from any support received;

(2) voluntary payments from either the responsible parent or client;

(3) payments by the responsible parent which the court may order, only if such payments do not reduce the responsible parent's ability to pay current support and arrears.

The appropriate judicial official shall be informed of the available cost recovery methods at the time a support order is sought.

A client from whom costs can be recovered pursuant to this subsection shall be liable for prepayment of any necessary court filing fees and paternity blood testing fees.

In all cases where ongoing enforcement services are being provided to a client from whom costs can be recovered pursuant to this subsection, or in cases in which ongoing enforcement services are no longer being provided but for whom costs were incurred and can be recovered pursuant to this subsection, or in cases in which a public assistance debt which accrued pursuant to G.S. 110-135 remains unrecovered, support payments shall be transmitted to the Department of Human Resources for appropriate distribution. When services are terminated and all costs and any public assistance debts have been satisfied, the support payment shall be redirected to the client.

Any costs incurred pursuant to this section shall constitute a debt owed to the State by the client. Any costs ordered by the court under subdivision (3) above shall constitute a debt owed to the State by the responsible parent. Payment may be demanded from either or both of them."

Sec. 3. Section 6 of Chapter 781 of the 1985 Session Laws is amended by deleting the language "and shall expire June 30, 1987".

Sec. 4. This act shall become effective September 1, 1986.

SESSION 19 85 J-073

INTRODUCED BY:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ACHIEVE GREATER CONSISTENCY AND EQUITY IN THE SETTING OF CHILD SUPPORT OBLIGATION AMOUNTS THROUGH THE USE OF ADVISORY GUIDELINES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-148 is amended by adding a new subsection (c) to read:

"(c) The chief district judges shall prescribe uniform statewide guidelines for the computation of child support obligations as provided in Chapter 50 or elsewhere in the General Statutes. The guidelines shall be advisory and shall compute the child support amount as a percentage of the obligor's gross income and shall be based on specific descriptive and numeric criteria, including the following: (1) special needs of the child, including physical and emotional health needs, educational needs, day-care costs, or needs related to the child's age; (2) shared physical custody arrangements or extended or unusual visitation arrangements; (3) a party's other support obligations to a current or former household, including the payment of alimony; (4) a party's extremely low or extremely high income, such that application of the guidelines produces an amount that is clearly too high in relation to the party's own needs or the child's needs; (5)

a party's intentional suppression or reduction of income, hidden income, income that should be imputed to a party, or a party's substantial assets; (6) support that a party is providing or will be providing other than by periodic money payments, such as lump sum payments, possession of a residence, payment of a mortgage, payment of medical expenses, or provision of health insurance coverage; (7) a party's own special needs, such as unusual medical or other necessary expenses; and (8) any other factor the court finds to be just and proper. The chief district judges shall prescribe such guidelines before January 1, 1987, and may periodically review and revise the guidelines."

Sec. 2. The Administrative Office of the Courts shall survey the implementation of the guidelines in the judicial districts and report to the General Assembly on or before January 1, 1989.

Sec. 3. This act is effective upon ratification.

Federal Child Support Enforcement Amendments of 1984 (Public Law 98-378)

Statutory Mandates:

	Enacted Legislation
- Income Withholding	Pending (SB 303)
- Expedited Processes	
- State Income Tax Refund Offset	+ (SB 300)
- Liens Against Property	+
- Paternity SOL	+ (SB 336)
- Security or Bond	+
- Information to Credit Agencies	
- Child and Spousal Support	+ (SB 206)
- Fees for Services	+ (SB 337)

Statutory, Administrative or Judicial Mandates:

- Notification to AFDC Recipients of Collections
- Inclusion of Medical Insurance in Support Orders
- Child Support Collections for Children in Foster Care
- Publication of Child Support Services through Public Service Announcements
- Continuation of Child Support Services when AFDC Terminates
- Support Guidelines
- State Commissions on Child Support

North Carolina
House of
Representatives

Liston B. Ramsey, Speaker

Raleigh 27611
(919) 733-3451

February 6, 1986

Representative Ruth Easterling
Senator Helen R. Marvin
Co-Chairmen
Child Support Study Commission
Legislative Building
Raleigh, North Carolina 27611

Dear Members of the Commission:

Allow me to express to you my appreciation and support for the work you are doing in the vital area of child support enforcement in North Carolina.

This is one of the most important studies currently being conducted by the Legislative Research Commission. A sound program of child support is essential to the general welfare and, in particular, to the institution of the family.

Considering the conscientious manner in which you are approaching your duties, I am confident that the recommendations you arrive at will be meaningful and effective.

I extend to each of you my personal regards and best wishes.

Sincerely yours,

Liston

Liston B. Ramsey

LBR:dhb

cc: The Honorable Robert Jordan, III
The Honorable Franklin Freeman

OFFICE OF THE LIEUTENANT GOVERNOR
STATE OF NORTH CAROLINA
RALEIGH 27611

ROBERT B. JORDAN III
LIEUTENANT GOVERNOR

February 6, 1986

The Honorable Helen Marvin, Co-Chair
The Honorable Ruth Easterling, Co-Chair
LRC on Child Support Enforcement
Legislative Building
Raleigh, NC 27611

Dear Members of the Child Support Study:

I appreciate the invitation to meet with you today and regret that I cannot be in attendance. I want to stress to each of you the importance of the work you are doing for the Legislative Research Commission.

Many of the reforms recently initiated in the child support system are the result of strong leadership on the part of the General Assembly. We have seen collections increase since better enforcement measures have been mandated in North Carolina, and children of both AFDC and non-AFDC parents have benefited a great deal. Your role is vital in the coming years in further strenthening the process by which children receive from the absent parent the court-ordered support they so richly deserve.

We are at an important crossroads in implementing an effective system of child support enforcement. Our state's response to the federal Child Support Amendments of 1984 and the evaluation of reforms enacted by the legislature during the last few years is critical.

In your deliberations, I ask that you give particular attention to the question of administrative responsibility for the child support program, the need for payment guidelines, and the processes by which child support actions can be expedited. An idea of special interest to me, is the **single intake proposal.** I want you to pursue this option with the greatest speed, possibly recommending piloting the project for some counties as early as June 1986.

Be assured of my strong interest in your work and in effectively managing the child support system so that the proper beneficiaries receive financial support. I plan to be personally involved in negotiations with the business community, the judiciary and the administration to further strengthen the child support system. Our immediate goal should be to facilitate a single portal of entry for collections enforcement and to establish good management practices for all child support actions.

These goals require our best and deserve our full and immediate attention. I know you join me in these challenges.

Sincerely,

Bob Jordan

cc: The Honorable Liston Ramsey
The Honorable Franklin Freeman

SESSION 19 85

J-064

INTRODUCED BY:

Proposed Committee Substitute for SB 303

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES TO ESTABLISH PROCEDURES FOR WITHHOLDING FROM WAGES AND OTHER INCOME IN CHILD SUPPORT CASES AS REQUIRED BY FEDERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-129 is amended by adding the following new subdivisions at the end of the section to read:

"(6) 'Child Support Hearing Officer' means a clerk or deputy or assistant clerk of superior court or a magistrate who has been designated pursuant to Article 2 of Chapter 50 to hear and enter orders in child support cases.

(7) 'Disposable income' means any form of periodic payment to an individual, regardless of sources, including but not limited to wages, salary, commission, self-employment income, bonus pay, severance pay, sick pay, incentive pay, vacation pay, compensation as an independent contractor, worker's compensation, disability, annuity, survivor's benefits, pension and retirement benefits, interest, dividends, rents, royalties, trust income and other similar payments, which remain after the deduction of amounts for

federal, state, and local taxes, Social Security, and involuntary retirement contributions. However, Supplemental Security Income, Aid for Dependent Children, and other public assistance payments shall be excluded from disposable income.

For employers, wages means 'wage' as it is defined by G.S. 95-25.2(16).

(8) 'IV-D case' means a case in which services have been applied for or are being provided by a child support enforcement agency established pursuant to Title IV-D of the Social Security Act as amended and this Article.

(9) 'Non-IV-D case' means any case, other than a IV-D case, in which child support is legally obligated to be paid.

(10) 'Initiating party' means the party, the attorney for a party, a child support enforcement agency, or the clerk of superior court who initiates an action, proceeding, or procedure as allowed or required by law for the establishment or enforcement of a child support obligation.

(11) 'Mistake of fact' means that the obligor:

(a) is not in arrears in an amount equal to the support payable for one month; or

(b) did not request that withholding begin, if withholding is pursuant to a purported request by the obligor for withholding; or

(c) is not the person subject to the court order of support for the child named in the advance notice of withholding.

(12) 'Obligee', in a IV-D case, means the child support enforcement agency, and in a non-IV-D case means the individual to whom a duty of support is owed or the individual's legal representative.

(13) 'Obligor' means the individual who owes a duty to make child support payments under a court order.

(14) 'Payor' means any payor, including any federal, state, or local governmental unit, of disposable income to an obligor. When the payor is an employer, payor means employer as is defined under the Fair Labor Standards Act."

Sec. 2. G.S. 110-136 is repealed.

Sec. 3. Article 9 of Chapter 110 of the General Statutes is amended by adding new sections following G.S. 110-136.2 to read:

"§ 110-136.3. Income withholding procedures; applicability.--(a) Required contents of support orders. All child support orders, civil or criminal, entered or modified in the State beginning October 1, 1986, shall:

(1) require the obligor to keep the clerk of court or IV-D agency informed of his current residence and mailing address and of the name and address of any payor of his disposable income and of the

amount and effective date of any substantial change in his disposable income, and

(2) provide for implementation of income withholding procedures as provided in this Article.

(b) When obligor subject to withholding. An obligor shall become subject to income withholding on the earliest of:

(1) the date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month; or

(2) the date on which the obligor requests withholding.

(c) Applicability; interstate cases. Notwithstanding any other provision of law, the income withholding provisions of this Article shall apply to any civil or criminal child support order, entered or modified before, on, or after October 1, 1986. In interstate cases, such provisions shall apply to a child support order of this or any other state. The law of the state in which the support order was entered shall apply in determining when withholding shall be implemented. The law and procedures of the state where the obligor is employed shall apply in all other respects.

(d) IV-D procedures and regulations. Procedures, rules, and regulations necessary for child support enforcement agencies to effect the income withholding provisions of this Article in IV-D cases shall be established by the Secretary of the Department of Human Resources or his designee.

"§ 110-136.4. Implementation of withholding in IV-D cases.--(a) Advance notice of withholding. When an obligor in a IV-D case becomes subject to income withholding, the obligee shall, after verifying the obligor's current employer or other payor, wages or other disposable income, and mailing address, serve the obligor with advance notice of withholding in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(b) Contents of advance notice. The advance notice to the obligor shall contain, at a minimum, the following information:

(1) whether the proposed withholding is based on the obligor's failure to make legally obligated payments in an amount equal to the support payable for one month or on the obligor's request for withholding;

(2) the amount of overdue support, the total amount to be withheld, and when the withholding will occur;

(3) the name of each child for whose benefit the child support is due, and information sufficient to identify the court order under which the obligor has a duty to support the child;

(4) that the withholding will apply to the obligor's wages or other sources of disposable income from current payors and all subsequent payors and may apply to other sources of income once the procedures under this section are invoked;

(5) an explanation of the obligor's rights and responsibilities pursuant to this section;

(6) that withholding will be continued until terminated pursuant to G.S. 110-136.10.

(c) Contested withholding. The obligor may contest the withholding only on the basis of a mistake of fact. To contest the withholding, the obligor must, within 10 days of receipt of the advance notice of withholding, request a hearing in the county where the support order was entered before the child support hearing officer where established or before the district court and give notice to the obligee specifying the mistake of fact upon which the hearing request is based. If the asserted mistake of fact can be resolved by agreement between the obligee and the obligor, no hearing shall occur. Otherwise, a hearing shall be held and a determination made, within 30 days of the obligor's receipt of the advance notice of withholding, as to whether the asserted mistake of fact is valid. No withholding shall occur pending the hearing decision. The failure to hold a hearing within 30 days shall not invalidate an otherwise properly entered order. If it is determined that a mistake of fact exists, no withholding shall occur. Otherwise, within 45 days of the obligor's receipt of the advance notice of withholding, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. In the event of appeal, withholding shall not be stayed. If the appeal is concluded in favor of the obligor,

the obligee shall promptly repay sums wrongfully withheld and notify the payor to cease withholding.

(d) Uncontested withholding. If the obligor does not contest the withholding within the 10-day response period, the obligee shall serve the payor, pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk.

(e) Payment not a defense to withholding. The payment of overdue support shall not be a basis for terminating or not implementing withholding.

(f) Multiple withholdings. The obligor must notify the obligee if the obligor is currently subject to another withholding for child support. In the case of two or more withholdings against one obligor, the obligee or obligees shall attempt to resolve any conflict between the orders in a manner that is fair and equitable to all parties and within the limits specified by G.S. 110-136.6. If the conflict cannot be so resolved, an injured party, upon request, shall be granted a hearing in accordance with the procedure specified in G.S. 110-136.4(c). The conflict between the withholding orders shall be resolved in accordance with G.S. 110-136.7.

(g) Inability to implement withholding. When an obligor is subject to withholding, but withholding under this section cannot be implemented because the obligor's location is unknown, because the extent and source of his disposable income cannot be determined, or for any other reason, the obligee shall either request the clerk of superior court to initiate

enforcement proceedings under G.S. 15A-1344.1(d) or G.S. 50-13.9(d) or take other appropriate available measures to enforce the support obligation.

(h) Modification of withholding. When an order for withholding has been entered under this section, the obligee may modify the withholding based on changed circumstances. The obligee shall proceed as is provided in this section.

(i) Applicability of section. The provisions of this section apply to IV-D cases only.

"§ 110-136.5. Implementation of withholding in non-IV-D cases.--(a) Motion or complaint or consent order for withholding. Notwithstanding any other provision of law, any obligee may apply to the court for an order of income withholding, or at any time the parties may agree to income withholding by consent order. The obligee may apply to the court by motion or in an independent action. The motion or complaint shall be verified and state, to the extent known:

(1) that the obligor is under a court order to provide child support, and information sufficient to identify the order;

(2) that the obligor is delinquent in an amount equal to the support payable for one month or that the obligor has requested that income withholding begin;

(3) the amount of overdue support and the total amount sought to be withheld;

(4) the name of each child for whose benefit support is due;

(5) the name, location, and mailing address of the payor or payors from whom withholding is sought and the amount of the obligor's monthly disposable earnings from each payor.

(b) Notice to obligor. The motion or complaint shall include or be accompanied by a notice to the obligor, stating:

(1) that withholding, if implemented, will apply to the obligor's current payors and all subsequent payors;

(2) that withholding, if implemented, will be continued until terminated pursuant to G.S. 110-136.10.

(c) Order for withholding. If the child support hearing officer or district court judge finds after hearing evidence that the obligor, at the time of the filing of the motion or complaint was, or at the time of the hearing is, delinquent in child support payments in an amount equal to the support payable for one month or that the obligor has requested that income withholding begin, the court shall enter an order for income withholding, unless:

(1) the obligor proves a mistake of fact; or

(2) the court finds that the child support obligation can be enforced and the child's right to receive support can be ensured without entry of an order for income withholding; or

(3) the court finds that the obligor has no disposable income subject to withholding or that

withholding is not feasible for any other reason.

If the obligor fails to respond or appear, the court shall hear evidence and enter an order as provided herein.

(d) Notice to payor and obligor. If an order for income withholding is entered, a notice of obligation to withhold shall be served by certified mail, return receipt requested, on the payor or payors and the obligor.

(e) Modification of withholding. When an order for withholding has been entered under this section, any party may file a motion seeking modification of the withholding based on changed circumstances. The clerk or the court on its own motion may initiate a hearing for modification when it appears that modification of the withholding is required or appropriate.

"§ 110-136.6. Amount to be withheld.--(a) Computation of amount. When income withholding is implemented pursuant to this Article, the amount to be withheld shall include:

(1) an amount sufficient to pay current child support; and

(2) an additional amount toward liquidation of arrearages; and

(3) a processing fee of two dollars ($2.00) to cover the cost of withholding, to be retained by the payor for each withholding unless waived by the payor.

The amount withheld may also include court costs and attorneys fees as may be awarded by the court in non-IV-D cases only.

(b) Limits on amount withheld. Withholding for current support, arrearages, processing fees, court costs, and attorneys fees shall not exceed forty percent (40%) of the obligor's disposable income for one pay period from the payor for any one order of withholding. The sum of multiple withholding orders for current support, arrearages, processing fees, court costs, and attorneys fees shall not exceed:

(1) forty-five percent (45%) of disposable income for one pay period from the payor in the case of an obligor who is supporting his spouse or other dependent children; or

(2) fifty percent (50%) of disposable income for one pay period from the payor in the case of an obligor who is not supporting a spouse or other dependent children.

(c) Contents of order and notice. An order or advance notice for withholding and any notice to a payor of his obligation to withhold shall state a specific money amount to be withheld. The notice shall clearly indicate that in no event shall the amount withheld exceed the appropriate percentage of disposable income paid by a payor as provided in subsection (b).

"§ 110-136.7. Multiple withholding.--When an obligor is subject to more than one withholding for child support, withholding for current child support shall have priority over past-due support. Where two or more orders for current support exist, each family shall receive a pro rata share of the total

amount withheld based on the respective child support orders being enforced.

"§ 110-136.8. Notice to payor; payor's responsibilities.--(a) Contents of notice. Notice to a payor of his obligation to withhold shall include information regarding the payor's rights and responsibilities, the penalties under this section, and the maximum percentages of disposable income that may be withheld as provided in G.S. 110-136.6.

(b) Payor's responsibilities. A payor who has been properly served with a notice to withhold is required to:

(1) withhold from the obligor's disposable income and, within 10 days of the date the obligor is paid, send to the clerk of superior court specified in the notice, the amount specified in the notice, but in no event more than the amount allowed by G.S. 110-136.6; however, if a lesser amount of disposable income is available for any pay period, the payor shall, using the percentages as provided in G.S. 110-136.6, compute and send the appropriate amount to the clerk of court;

(2) continue withholding until further notice from the IV-D obligee or the clerk of superior court;

(3) withhold for child support before withholding pursuant to any other legal process under state law against the same disposable income;

(4) begin withholding from the first payment due the obligor in the first pay period that occurs 14

days following the date the notice of the obligation to withhold was served on the payor;

(5) promptly notify the obligee in a IV-D case, or the clerk of superior court in a non-IV-D case, in writing:

a. if there is more than one child support withholding for the obligor;

b. when the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;

c. of the payor's inability to comply with the withholding for any reason.

(c) Change in obligor's employment. If the obligor changes employment within the State when withholding is in effect, the requirement for withholding shall continue, and

(1) in a IV-D case, the IV-D obligee shall make any necessary adjustments to the withholding, notify the obligor and his new employer in accordance with this section, and file a copy of the adjusted withholding with the clerk of superior court;

(2) in a non-IV-D case, the clerk shall serve a notice of obligation to withhold according to the terms of the withholding order on the new employer and on the obligor; if the obligor or payor gives notice that an adjustment to the

withholding order, other than the change in payor, is needed, the matter shall be scheduled for hearing before a child support hearing officer or district court judge who shall make any necessary adjustments to the withholding.

(d) The payor may combine amounts withheld from obligors' disposable incomes in a single payment to each clerk of superior court if the payor separately identifies by name and case number the portion of the single payment attributable to each individual obligor.

(e) Prohibited conduct by payor; civil penalty. Notwithstanding any other provision of law, when a court finds, pursuant to a motion in the cause filed by the initiating party joining the payor as a third party defendant, with 30 days notice to answer the motion, that a payor has willfully refused to comply with the provisions of this section, such payor shall be ordered to commence withholding and shall be held liable to the initiating party for any amount which such payor should have withheld, except that such payor shall not be required to vary the normal pay or disbursement cycles in order to comply with these provisions.

A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any responsible parent solely because of the withholding. When a court finds, pursuant to a motion filed by the initiating party, that a payor has taken any of these actions, the employer shall be liable for a civil penalty to be paid to the initiating party for the benefit of the children covered by the

support order. For a first offense, the civil penalty shall be one hundred dollars ($100.00). For second and third offenses, the civil penalty shall be five hundred dollars ($500.00) and one thousand dollars ($1,000), respectively. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by an obligor as a result of the violation, and an obligor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position.

"§ 110-136.9. Payment of withheld funds.--In IV-D cases, when required by federal or state law or regulations or by court order, the clerk of superior court shall transmit payments received from payors to the Department of Human Resources for appropriate distribution. In all other cases, unless a court order requires otherwise, the clerk of superior court shall transmit the payments to the custodial parent.

"§ 110-136.10. Termination of withholding.--A requirement that income be withheld for child support shall promptly terminate as to prospective payments when:

(1) the child support order has expired or become invalid; or

(2) the initiating party, the obligor, and the child support hearing officer or district court judge agree to termination because there is another adequate means to collect child support or arrearages; or

(3) the whereabouts of the child are unknown, except that withholding shall not be terminated until all valid arrearages are paid in full."

Sec. 4. G.S. 50-13.9(b) is amended by adding at the end the following to read:

"In IV-D cases, when required by federal or state law or regulations or by court order, the clerk of superior court shall transmit child support payments that are made to the clerk to the Department of Human Resources for appropriate distribution. In all other cases, whether IV-D or non-IV-D, the clerk shall transmit the payments to the custodial parent or other party entitled to receive them, unless a court order requires otherwise."

Sec. 5. G.S. 50-13.9(d) is rewritten to read:

"(d) In a non-IV-D case, when an obligor fails to make a required payment of child support and is in arrears, the clerk of superior court shall mail by regular mail to the last known address of the obligor a notice of delinquency. The notice shall set out the amount of child support currently due and shall demand immediate payment of said amount. The notice shall also state that failure to make immediate payment will result in the issuance by the court of an enforcement order requiring the obligor to appear before a child support hearing officer or district court judge and show cause why the support obligation should not be enforced by income withholding, contempt of court, or other appropriate means. Failure to receive the delinquency notice shall not be a defense in any subsequent proceeding. If income withholding has been

implemented against the obligor or the obligor has been previously found in contempt for nonpayment under the same child support order, sending the notice of delinquency shall be in the discretion of the clerk.

If the arrearage is not paid in full within 21 days after the mailing of the delinquency notice, or is not paid within 30 days after the obligor becomes delinquent if the clerk has elected not to send a delinquency notice, the clerk shall cause an enforcement order to be issued and shall issue a notice of hearing before a child support hearing officer or district court judge. The enforcement order shall order the obligor to appear and show cause why he should not be subjected to income withholding or adjudged in contempt of court, or both, and shall order the obligor to bring to the hearing records and information relating to his employment and the amount and sources of his disposable income. The enforcement order shall state:

(1) that the obligor is under a court order to provide child support, the name of each child for whose benefit support is due, and information sufficient to identify the order;

(2) that the obligor is delinquent and the amount of overdue support;

(3) that the court may order income withholding if the obligor is delinquent in an amount equal to the support due for one month;

(4) that income withholding, if implemented, will apply to the obligor's current payors and all

subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10;

(5) that failure to bring to the hearing records and information relating to his employment and the amount and sources of his disposable income will be grounds for contempt;

(6) that if income withholding is not an available or appropriate remedy, the court may determine whether the obligor is in contempt or whether any other enforcement remedy is appropriate.

The enforcement order may be signed by the clerk or a child support hearing officer or district court judge, and shall be served on the obligor pursuant to G.S. 1A-1, Rules of Civil Procedure. The clerk shall also notify the party to whom support is owed of the pending hearing. The clerk may withdraw the order to the supporting party upon receipt of the delinquent payment. On motion of the person to whom support is owed, with the approval of the child support hearing officer or district court judge, if he finds it is in the best interest of the child, no enforcement order shall be issued.

When the matter comes before the court, the court shall proceed as in the case of a motion for income withholding under G.S. 110-136.5. If income withholding is not an available or adequate remedy, the court may proceed with contempt, imposition of a lien, or other available, appropriate enforcement remedies.

This subsection shall apply only to non-IV-D cases, except that the clerk shall issue an enforcement order in a IV-D case when requested to do so by an IV-D obligee."

Sec. 7. G.S. 50-13.9(f) is amended by rewriting the first seven lines to read:

"(f) At least seven days prior to an enforcement hearing as set forth in subsection (d), the clerk must notify the child support hearing officer or district court judge of all cases to be heard for enforcement at the next term, and the hearing officer or judge shall appoint an attorney from the list described in subsection (e) to represent each party to whom support payments are owed if the hearing officer or judge deems it to be in the best interest of the child for whom support is being paid, unless:"

G.S. 50-13.9(f) is further amended by rewriting the last sentence to read:

"The hearing officer or judge may order payment of reasonable attorney's fees as provided in G.S. 50-13.6."

Sec. 8. G.S. 50-13.9(g) is rewritten to read:

"(g) Nothing in this section shall preclude the independent initiation by a party of proceedings for civil contempt or for income withholding."

Sec. 9. G.S. 15A-1344.1(d) is rewritten to read:

"(d) When a defendant in a non-IV-D case, as defined in G.S. 110-129, fails to make required payments of child support and is in arrears, the clerk of superior court may mail by regular mail to the last known address of the defendant a notice of delinquency which shall set out the amount of child

support currently due and which shall demand immediate payment of said amount. Failure to receive the delinquency notice shall not be a defense in any probation violation hearing or other proceeding thereafter. If the arrearage is not paid in full within 21 days after the mailing of the delinquency notice, or is not paid within 30 days after the defendant becomes delinquent if the clerk has elected not to send a delinquency notice, the clerk shall certify the amount due to the district attorney and probation officer, who shall initiate proceedings for revocation of probation pursuant to Article 82 of Chapter 15A or make a motion in the criminal case for income withholding pursuant to G.S. 110-136.5 or both.

When a defendant in an IV-D case, as defined in G.S. 110-129, fails to make required payments of child support and is in arrears, at the request of the IV-D obligee the clerk shall certify the amount due to the district attorney and probation officer, who shall initiate proceedings for revocation of probation pursuant to Article 82 of Chapter 15A or make a motion in the criminal case for income withholding pursuant to G.S. 110-136.5 or both."

Sec. 10. Nothing in this act shall be construed as invalidating any garnishment instituted or effective prior to October 1, 1986.

Sec. 11. This act shall become effective October 1, 1986.

SESSION 19 85 J-063

INTRODUCED BY:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR EXPEDITING CHILD SUPPORT CASES AS REQUIRED BY FEDERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. All existing provisions in Chapter 50 of the General Statutes are designated as Article 1. Sections 50-22 through 50-29 of Chapter 50 are reserved for future codification. A new Article 2 is added to Chapter 50 to read:

"Article 2.

"Expedited Process for Child Support Cases.

"§ 50-30. Findings; policy; and purpose.--(a) Findings. The General Assembly makes the following findings:

(1) There is a strong public interest in providing fair, efficient, and swift judicial processes for establishing and enforcing child support obligations. Children are entitled to support from their parents, and court assistance is often required for the establishment and enforcement of parental support obligations. Children who do not receive support from their parents often become financially dependent on the State.

(2) For purposes of federal reimbursement under Title

IV-D of the Social Security Act, 42 U.S.C. § 666(a)(2), requires that the State have laws that require the use of federally defined expedited processes for obtaining and enforcing child support orders. The Secretary of the Department of Health and Human Services may waive the expedited process requirement with respect to one or more judicial districts on the basis of the effectiveness and timeliness of support order issuance and enforcement within the district.

(3) The State has a strong financial interest in complying with the expedited process requirement, and other requirements, of Title IV-D of the Social Security Act, but the State would incur substantial expense in creating statewide an expedited child support process as defined by federal law.

(4) The State's judicial system is largely capable of processing child support cases in a timely and efficient manner and has a strong commitment to doing so.

(5) The substantial expense the State would incur in creating a new system for obtaining and enforing child support orders would be reduced and better spent by improving the present system.

(b) Purpose and policy. It is the policy of this State to ensure, to the maximum extent possible, that child support obligations are established and enforced fairly, efficiently, and swiftly through the judicial system by means that make the

best use of the State's resources. It is the purpose of this Article to facilitate this policy. The Administrative Office of the Courts and judicial officials in each judicial district shall make a diligent effort to ensure that child support cases, from the time of filing to the time of disposition, are handled fairly, efficiently, and swiftly. The Administrative Office of the Courts and the Department of Human Resources shall work together to improve procedures for the handling of child support cases in which the State or county has an interest, including all cases that qualify in any respect for federal reimbursement under Title IV-D of the Social Security Act.

"§ 50-31. Definitions.--As used in this Article, unless the context clearly requires otherwise:

(1) 'Child support case' means the part of any civil action or proceeding, whether intrastate or interstate, that involves a claim for the establishment or enforcement of a child support obligation.

(2) 'Disposition of a child support case' means the entry of an order in a child support case that:

a. dismisses the claim for establishment or enforcement of the child support obligation; or

b. establishes a child support obligation and directs how that obligation is to be satisfied; or

c. orders a particular child support enforcement remedy; or

d. terminates the court's authority to act in the case until some other pleading is filed or some other action occurs.

(3) 'Expedited process' means a procedure for having child support orders established and enforced by a magistrate or clerk who has been designated as a child support hearing officer pursuant to this Article.

(4) 'Federal expedited process requirement' means the provision in Title IV, Part D of the Social Security Act, at 42 U.S.C. § 666(a)(2), that requires as a condition of the receipt of federal funds that a State have laws that require the use of federally defined expedited processes for obtaining and enforcing child support orders.

(5) 'Filing of a child support case' means the filing in the office of the clerk of superior court of a pleading that seeks establishment or enforcement of a child support obligation, or the sending of written notice to a party who has been ordered to pay child support that an enforcement remedy is being sought or implemented.

(6) 'Hearing officer or child support hearing officer' means a clerk or deputy or assistant clerk of superior court or a magistrate who has been designated pursuant to this Article to hear and enter orders in child support cases.

(7) 'Initiating party' means the party, the attorney for

a party, a child support enforcement agency established pursuant to Title IV, Part D of the Social Security Act, or the clerk of superior court who initiates an action, proceeding, or procedure as allowed or required by law for the establishment or enforcement of a child support obligation.

"§ 50-32. Waiver of expedited process requirement.--(a) DHR to seek waiver. The Department of Human Resources, with the assistance of the Administrative Office of the Courts, shall vigorously pursue application to the Secretary of the Department of Health and Human Services for waivers of he federal expedited process requirement.

(b) Districts that do not qualify. In any judicial district that does not qualify for a waiver of the federal expedited process requirement, an expedited process shall be established as provided in G.S. 50-33.

"§ 50-33. Establishment of an expedited process.--(a) Districts required to have expedited process. In any judicial district that is required by G.S. 50-32(b) to establish an expedited child support process, the Director of the Administrative Office of the Courts shall notify the chief district court judge and the clerk or clerks of superior court in the district in writing of the requirement. The Director of the Administrative Office of the Courts, the chief district court judge, and the clerk or clerks of superior court in the district shall implement an expedited child support process as provided in this section.

(b) District or county may elect to have expedited process. In any judicial district, or any county within a judicial district, that is not required by G.S. 50-32(b) to establish an expedited child support process, an expedited process may be established when the Director of the Administrative Office of the Courts, the chief district court judge, and the clerk or clerks of superior court in the affected county or counties in the district find and agree that:

(1) The judicial district cannot satisfy the requirements for a waiver of the federal expedited process requirement without unduly impairing the district's ability to dispose of other cases expeditiously; or

(2) It would be more efficient and cost effective to implement an expedited process than to satisfy the waiver requirements; or

(3) It would be in the best interest of the citizens of the county or district and the State to implement an expedited process.

The findings and agreement required by this subsection must be in writing and signed by the chief district judge, the clerk or clerks of superior court in the affected county or counties, and the Director of the Administrative Office of the Courts, and must be filed with the clerk in each affected county of the district and with the Administrative Office of the Courts.

(c) Procedure for establishing expedited process. When a judicial district is required to implement an expedited process, or when a judicial district or a county is authorized and

elects to do so, the Director of the Administrative Office of the Courts, the chief district judge, and the clerk of superior court in an affected county shall determine by agreement whether the child support hearing officer or officers for that county shall be one or more clerks or one or more magistrates. If such agreement has not been reached within 15 days after the notice required by subsection (a) when implementation is required, or within 15 days after an agreement under subsection (b) that implementation should occur, the Director of the Administrative Office of the Courts shall make the decision. If it is decided that the hearing officer or officers for a county shall be magistrates, the chief district judge, the clerk of superior court, and the Director of the Administrative Office of the Courts shall ensure his or their qualification for the position. If it is decided that the hearing officer or officers for a county shall be the clerk or deputy or assistant clerks, the clerk of superior court in the county shall designate the person or persons to serve as hearing officer, and the chief district judge, the clerk of superior court, and the Director of the Administrative Office of the Courts shall ensure his or their qualification for the position.

(d) Public to be informed. When an expedited process is to be implemented in a county or judicial district, the chief district court judge, the clerk or clerks of superior court in affected counties in the district, and the Administrative Office of the Courts shall take steps to ensure that attorneys, the general public, and parties to pending child support cases in the county or district are informed of the change in

procedures and helped to understand and use the new system effectively.

"§ 50-34. Authority and duties of a child support hearing officer.--A child support hearing officer who is properly qualified and designated under this Article has the following authority and responsibilities in all child support cases:

(1) To conduct hearings and to ensure that the parties' due process rights are protected;

(2) To take testimony and establish a record;

(3) To evaluate evidence and make decisions regarding the establishment or enforcement of child support orders;

(4) To accept and approve voluntary acknowledgements of support liability and stipulated agreements setting the amount of support obligations;

(5) To accept and approve voluntary acknowledgements and affirmations of paternity;

(6) Except as otherwise provided in this Article, to enter child support orders that have the same force and effect as orders entered by a district court judge;

(7) To enter temporary child support orders pending the resolution of unusual or complicated issues by a district court judge;

(8) To enter default orders; and

(9) To subpoena witnesses and documents.

"§ 50-35. Child support procedures in districts with expedited process.--(a) Scheduling of cases. The procedures of this section shall apply to all child support cases in any

judicial district or county in which an expedited process has been established. All claims for the establishment or enforcement of a child support obligation, whether the claim is made in a separate action or as part of a divorce or any other action, shall be scheduled for hearing before the child support hearing officer. The initiating party shall send a notice of the date, time, and place of the hearing to all other parties. Service of process shall be made and notices given as provided by G.S. 1A-1, Rules of Civil Procedure.

(b) Place of hearing. The hearing before the child support hearing officer need not take place in a courtroom, but shall be conducted in an appropriate judicial setting.

(c) Hearing procedures. The hearing of a case before a child support hearing officer is without a jury. The rules of evidence applicable in the trial of civil actions generally are observed; however, the hearing officer may require the parties to produce and may consider financial affidavits, state and federal tax returns, and other financial or employment records. Except as otherwise provided in this Article, the hearing officer shall determine the parties' child support rights and obligations and enter an appropriate order based on the evidence and the child support laws of the State. All parties shall be provided with a copy of the order.

(d) Record of proceeding. The record of a proceeding before a child support hearing officer shall consist of the pleadings filed in the child support case, documentation of proper service or notice or waiver, and a copy of the hearing

officer's order. No verbatim recording or transcript shall be required or provided at State expense.

(e) Transfer to district court judge. When a case before the hearing officer involves a contested paternity action, custody dispute, visitation rights, the ownership, possession, or transfer of an interest in property to satisfy a child support obligation, or other complex issues, the hearing officer shall transfer the case for hearing before a district court judge. Upon ordering such a transfer except in cases of contested paternity, the hearing officer shall also enter a temporary order that provides for the payment of a money amount or otherwise addresses the child's need for support pending the resolution of the case by the district court judge. The chief district court judge shall establish a procedure for such transferred cases to be given priority for hearing before a district court judge.

"§ 50-36. Enforcement authority of child support hearing officer; contempt.--When a child support case is before a child support hearing officer for enforcement of a child support order, the hearing officer has the same authority that a district court judge would have, except in cases of contempt. Orders that commit a party to jail for civil or criminal contempt for the nonpayment of child support, or for otherwise failing to comply with a child support order, may be entered only by a district court judge. When it appears to a hearing officer that there is probable cause for finding such contempt in a case before the child support hearing officer and that no other enforcement remedy would be effective or sufficient, the

hearing officer shall enter an order finding probable cause and referring the case for hearing before a district court judge. The order may indicate the amount of payment the responsible parent may make, or other action he may take, or both, to comply with the child support order. If proof of compliance is made to the hearing officer within a time specified in the order, the hearing officer may cancel the referral of the contempt case to district court. Except as specifically limited by this section, a clerk or magistrate acting as a child support hearing officer retains all of the contempt powers he or she otherwise has by virtue of being a clerk or magistrate.

"§ 50-37. Appeal from orders of the child support hearing officer.--(a) Appeal; hearing de novo. Any party may appeal an order of a child support hearing officer for a hearing de novo before a district court judge by giving notice of appeal at the hearing or in writing within 10 days after entry of judgment. Upon appeal noted, the clerk of superior court shall place the case on the civil issue docket of the district court. The chief district court judge shall establish a procedure for such transferred cases to be given priority for hearing before a district court judge. Unless appealed from, the order of the hearing officer is final.

(b) Order not stayed pending appeal. Appeal from an order of a child support hearing officer does not stay the execution or enforcement of the order unless, on application of the appellant, a district court judge orders such a stay.

"§ 50-38. Qualifications of child support hearing officer.--(a) Qualifications. A clerk or deputy or assistant clerk of superior court or a magistrate, to be designated and serve as a child support hearing officer, shall satisfy each of the following qualifications:

(1) Be at least 21 years of age and not older than 70 years of age, and have a high school degree or the equivalent thereof.

(2) Be qualified by training and temperament to be effective in relating to parties in child support cases and in conducting hearings fairly and efficiently.

(3) Be certified by the Administrative Office of Courts as having completed the training required by subsection (b).

(b) Training required. Before a clerk or deputy or assistant clerk or a magistrate may conduct hearings as a child support hearing officer he or she must satisfactorily complete a course of instruction in the conduct of such hearings established by the Administrative Office of the Courts. The Administrative Office of the Courts shall establish a course in the conduct of such hearings. The Administrative Office of the Courts may contract with qualified educational organizations to conduct the course of instruction and must reimburse the clerks or magistrates attending for travel and subsistence incurred in taking such training."

Sec. 2. Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-178. Magistrate as child support hearing officer.--A magistrate who meets the qualifications of G.S. 50-38 and is properly designated pursuant to G.S. Chapter 50, Article 2, to serve as a child support hearing officer, may serve in that capacity and has the authority and responsibility assigned to child support hearing officers by Chapter 50."

Sec. 3. Chapter 7A of the General Statutes is amended by adding a new section to read as follows:

"§ 7A-183. Clerk or assistant or deputy clerk as child support hearing officer.--A clerk or assistant or deputy clerk of superior court who meets the qualifications of G.S. 50-38 and is properly designated pursuant to G.S. Chapter 50, Article 2, to serve as a child support hearing officer, may serve in that capacity and has the authority and responsibility assigned to child support hearing officers by Chapter 50."

Sec. 4. This act shall become effective October 1, 1986.